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9 GI Plum Holdco, LLC; and Quince Holdings
LLC dba Pueblo Springs Rehabilitation Center

13 PLUM HEALTHCARE GROUP, LLC,) CASE NO. 15CV2747W MDD
14 etc., et al.,)
15 Plaintiffs,) PLAINTIFFS' RESPONSE TO
16 v.) DEFENDANTS' SEPARATE
17 ONE BEACON PROFESSIONAL) STATEMENT OF UNDISPUTED
18 INSURANCE, etc., et al.,) FACTS IN SUPPORT OF ITS
19 Defendants.) MOTION FOR SUMMARY
20) JUDGMENT OR PARTIAL
21) SUMMARY JUDGMENT;
22) PLAINTIFFS' STATEMENT OF
23) DISPUTED AND UNDISPUTED
24) FACTS
25) (Memorandum of Points and
26) Authorities; Objections To and
) Motion To Strike Evidence;
) Declaration of Richard A. Huver;
) Declaration William Wilson;
) submitted concurrently.)
) Date: April 24, 2017
) Judge Thomas J. Whelan
) **[NO ORAL ARGUMENT**
) **PURSUANT TO LOCAL RULE]**

1 Pursuant to Local Rule 7.1(f), plaintiffs respond to defendants OneBeacon
 2 Professional Insurance and Homeland Insurance Company of New York's
 3 statement of undisputed material facts in support of their motion for summary
 4 judgment or partial summary judgment.

5 **UNDISPUTED FACTS AND EVIDENCE IN SUPPORT OF**
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

7 **Moving Party's Undisputed**
Material Fact and Supporting
Evidence:

- 9 1. Homeland Insurance Company
 10 of New York ("Homeland")
 11 issued a liability insurance
 12 policy to Plaintiffs with an
 13 inception date of August 4,
 14 2014 (the "Policy").
- 12 2. The Insuring Agreement of the
 13 Policy's "Claims Made General
 14 Liability Insurance" section
 15 states in pertinent part:

15 "The Underwriter will pay up to
 16 the applicable Limit of Liability
 17 shown in ITEM 4.B. of the
 18 Declaration on behalf of the
 19 Insured any Loss which the
 20 Insured is legally obligated to
 21 pay as a result of a covered
 22 Claim . . . that is caused by an
 23 Occurrence happening on or
 24 after the Retroactive Date;
 25 provided, that the Claim is first
 26 made against the Insured during
 27 the Policy Period or applicable
 28 Extended Reporting Period and
 reported to the Underwriter in
 accordance with GENERAL
 CONDITION (C) of this
 Policy."

- 24 3. The Policy contained a
 25 deductible of \$250,000 per
 26 claim.
- 27 4. The Policy's General
 28 Conditions section regarding

7 **Plaintiff's Response and**
Supporting Evidence:

- 9 1. Undisputed.
- 12 2. Plaintiffs do not dispute that
 13 The Policy is a "Claims Made"
 14 and "Claim Reported" policy
 15 containing these terms.
- 24 3. Undisputed.
- 27 4. Plaintiffs do not dispute the
 fact that Defendants did not
 have to pay any combination

- 1 “Limits of Liability” stated in
2 pertinent part:
- 3 “The **Insured** shall be
4 responsible for payment in full
5 of the applicable deductible or
6 self-insured retention stated in
7 ITEM 4 of the Declarations, and
8 the Underwriter’s obligation to
9 pay **Loss or Defense Expenses**
10 under this Policy shall be excess
11 of such deductible or self-
12 insured retention;”
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- 19 7. The Policy further provides that
20 “an **Employee’s** status as an
21 **Insured** is determined as of the
22 date of the **Occurrence** or
23 **Wrongful Act** upon which a
24 **Claim** involving the **Employee**
25 is based.”
- 26
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of Loss/Defense expense until \$250,000 of deductible was incurred. Plaintiffs dispute any argument that a legal defense was not required until then as the Policy requires defendants to immediately undertake the defense upon tender of the claim. See Defendants’ Exhibit (Defs’ Ex.”) 1, pg. 67, paragraphs (D) and (F).

5. Each of the Plaintiffs was a named insured.
5. Undisputed.
6. The Policy defined “insured” to include “any **Employee** or **Volunteer**, but only when such **Employee** or **Volunteer** is acting within the capacity and scope of his or her duties as such.”
- See Defs’ Ex. 1, pgs. 46 and 48.
6. Undisputed that for purposes of this liability coverage, an employee is only considered to be an “Insured” and entitled to liability coverage if they are (1) a defendant and (2) they were acting in the capacity and scope of their duties when they caused injury to someone else. However, Ms. Harris was not a defendant, so this portion of The Policy is really irrelevant. More importantly, Ms. Harris was not an “Insured.”
7. The Policy further provides that “an **Employee’s** status as an **Insured** is determined as of the date of the **Occurrence** or **Wrongful Act** upon which a **Claim** involving the **Employee** is based.”
7. Undisputed that for purposes of liability coverage, an employee is only considered to be an “Insured” and entitled to liability coverage if they are (1) a defendant and (2) they were acting in the capacity and scope of their duties when they caused injury to someone else. However, disputed that this policy provision is intended to define the hour at which an injury occurs for purposes of determining whether Harris was in the course and scope of her

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4. The Policy contained three exclusions that read:
- 5 Except as otherwise expressly provided in this Policy, this Policy does not apply to, and the Underwriter will not pay any **Loss or Defense Expenses**, for any **Claim** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged:
- 6 * * *
- 7 (2) act, error, omission,
Occurrence, Wrongful Act,
event, suit or demand which was the subject of any notice given under any other policy of insurance or plan or program of self-insurance in effect prior to the Inception Date as set forth in ITEM 2 of the Declarations; . . .
- 8 (5) obligation of an **Insured** pursuant to any workers' compensation, unemployment compensation, disability benefits or similar law; . . .
- 9 (7) **Claim** made by or for the benefit of, or in the name or right of, one current or former **Insured** against another current or former **Insured**; . . .
10. In October 2014, Janice Harris sued Plaintiffs for an injury she suffered on October 22, 2013 (the "Accident").
11. In her complaint, Harris alleged she was an Arizona resident and the Director of Nursing for plaintiff Quince Holdings, LLC, one of the nursing homes in the Plum Healthcare network.
12. Undisputed the Policy read as quoted. Disputed that defendants ever asserted Exclusion (D)(2) or (D)(5) before this motion for summary judgment. Disputed that any of the three quoted Exclusions applied to this claim.
13. Declaration of Richard A. Huver ("Huver Dec., ¶____") ¶16, and Exhibit 1, Deposition of Daniele Freaner ("Ex. 1, Freaner Dep") at 55:17 - 56:18; 58:24 - 59:12; 137:15 - 138:11; Huver Dec., ¶17 and Exhibit 2, Deposition of Maureen Ringland ("Ex. 2, Ringland Dep"), at 142:24 - 143:7; 144:1-21.
14. Undisputed.
15. Undisputed.

- 1 11. In her complaint, Harris alleged
2 that she had traveled to Bishop,
3 California to attend a “budget
4 retreat” organized by her
5 employer Quince and the other
Plaintiffs and attended by other
senior staff from facilities in the
Plum HealthCare network.
- 6 12. In her complaint, Harris alleged
7 that during the budget retreat,
8 Plaintiffs organized an off-road
9 vehicle activity as a surprise
addition to the “agenda” for the
retreat.
- 10 13. In her complaint, Harris alleged
11 that, while riding in a RHINO
12 off-road vehicle driven by
13 fellow employee Christopher
Romney, the vehicle rolled over
14 and Harris was seriously
injured.
- 15 14. In her complaint, Harris alleged
16 that, Plaintiffs negligently
17 “organized, planned, and carried
18 out” the off-road vehicle
19 activity, and failed to adequately
20 train or warn Romney how to
21 operate the RHINO safely.
- 22 15. Plaintiffs reported Harris’s
23 injury to their workers’
24 compensation carrier, Travelers,
25 on October 25, 2013.
- 26 11. Disputed. The budget retreat
27 was scheduled for a resort in
28 June Lake, CA. The stop in
Bishop was not for budget
retreat purposes.

Defs’ Ex. 3, pg. 114, ¶15.
Huver Dec., ¶20 and Ex.5, pg.
172.
12. Disputed. Ms. Harris’s
complaint alleged the
recreational Rhino ATV ride
occurred during free-time, was
not listed on the approved
agenda, and was not part of
the budget planning.

Defs’ Ex. 3, pg. 114, ¶16, and
pg. 115, ¶17. Huver Dec., ¶18
and Exhibit 4, Deposition of
John Romero (“Ex. 4 Romero
Dep”) at 56:23 - 57:12. Huver
Dec., ¶20 and Ex. 5, pg. 172.
13. Undisputed except for any
inference that Harris was an
employee within the course
and scope of her employment
at the time she was injured.
Harris specifically alleged she
was not in the course and
scope of her job duties when
she was injured.

Defs’ Ex. 3, pg. 116, ¶22.
14. Undisputed that Harris alleged
that all defendants acted
negligently, which included
the Rhino owner who had no
relationship with the Plum
entities.
15. Undisputed.

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- 1 16. Travelers paid Ms. Harris over
2 \$100,000 in workers'
3 compensation benefits.
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- 8 17. On or about November 14,
9 2014, Plaintiffs tendered the
10 defense of the Harris suit to
11 Homeland.
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- 14 18. In their tender on or about
15 November 14, 2014, Plaintiffs
16 sent Homeland a copy of the
17 complaint from Harris's lawsuit
18 and materials from Travelers'
19 workers' compensation file.
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- 23 19. The Travelers file showed that
24 Plaintiffs had submitted Harris's
25 claim for compensation under
26 their workers' compensation
27 coverage on October 25, 2013.
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- 30 20. The Travelers file also showed
31 that, by November 2014,
32 Travelers had deemed the
33 worker's compensation claim to
34 be "uncontroverted" and had
35 paid Harris benefits exceeding
36 \$100,000.
- 37
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- 39 16. Undisputed Travelers initially
40 paid Harris's workers comp
41 claim. Disputed as to whether
42 Travelers was ultimately
43 responsible for paying workers
44 comp benefits or not.
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- 48 Huver Dec., ¶16 and Ex. 1,
49 Freaner Dep, at 68:25 - 69:25;
50 85:4-9; 91:6-9. Huver Dec.,
51 ¶17 and Ex. 2, Ringland Dep,
52 at 81:5-17.
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- 55 17. Undisputed.
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- 59 18. Disputed. The tender of the
60 Harris complaint and other
61 documents was made by Jared
62 Moen of Marsh Risk &
63 Insurance Services.
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- 66 Freanor Declaration,
67 Paragraph 4, 5, 6.
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- 70 19. Plaintiffs object to this "fact"
71 on the grounds it is vague and
72 ambiguous as to time.
73 However, without waiving
74 said objection, undisputed a
75 worker comp claim was
76 submitted, disputed as to
77 exactly who submitted the
78 claim.
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- 81 20. Plaintiffs' object to the phrase
82 "uncontroverted" as vague,
83 ambiguous and unintelligible
84 in the context of this motion,
85 and assumes facts not in
86 evidence. Without waiving
87 said objections, disputed. No
88 evidence exists that Travelers
89 was made aware that Ms.
90 Harris claimed she was outside
91 the course and scope of her job
92 when injured. Travelers
93 accepted the claim and was not
94 a party to the November 2014

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lawsuit Harris filed. Further,
there was never a final
determination by any workers
compensation board or
administrative judge
adjudicating the issue of
Harris' course and scope
status. Finally, there is no
exclusion in The Policy which
precludes a defense if Harris
had a pending workers comp
claim.

8 Huver Dec., ¶16 and Ex. 1,
9 Freaner Dep, at 74:2-11; 85:4-
10 9; 91:6-9; 184:18-22; 185:15-
11 25; 186:23 - 187:10. Huver
12 Dec., ¶17 and Ex. 2, Ringland
13 Dep, at 81:5-17; 83:15 - 84:6;
14 120:8-11; 124:3-8.

15 21. Homeland called both Travelers
16 (the workers' compensation
17 carrier) and Plaintiffs' insurance
18 broker, and both confirmed that
19 Harris was receiving workers'
20 compensation benefits for the
21 accident.

22 21. Plaintiffs object to this "fact"
23 on the grounds it is hearsay
24 without exception, is
25 compound and is irrelevant to
26 defendants' duty to defend.
27 However, without waiving
28 said objections, undisputed
information that Harris was
receiving workers comp
benefits. However, defendants
never asked Travelers whether
Harris was or was not in the
course and scope of her
employment and never advised
Travelers Harris had filed a
lawsuit alleging she was not in
the course and scope of
employment. Finally, there is
no exclusion in The Policy
which precludes a defense if
Harris had a pending workers
comp claim.

29 Huver Dec., ¶16 and Ex. 1,
30 Freaner Dep, at 74:2-11; 85:4-
31 9; 91:6-9; 184:18-22; 185:15-
32 25; 186:23 - 187:10. Huver
33 Dec., ¶17 and Ex. 2, Ringland
34 Dep, at 81:5-17; 83:15 - 84:6;
35 120:8-11; 124:3-8.

- 1 22. On November 19, 2014,
 2 Homeland told plaintiff Plum
 3 and Plaintiffs' insurance broker
 4 that it concluded the claim was
 5 not covered because, based on
 6 the workers' compensation
 7 involvement, the insured vs.
 8 insured exclusion applied.
- 9
- 10 23. Neither Plum nor Plaintiffs'
 11 broker told Homeland that it
 12 was mistaken about any facts or
 13 that it owed a defense.
- 14
- 15 24. On December 9, 2014,
 16 Homeland sent Plaintiffs a letter
 17 (i) explaining the basis for its
 18 coverage determination, (ii)
 19 reserving its rights to rely on
 20 other policy provisions, and (iii)
 21 asking Plaintiffs to "advise us of
 22 any information that you have
 23 that you believe may affect our
 24 determination concerning
 25 coverage available under the
 26 Homeland policy."
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22. Undisputed that defendants denied plaintiffs a defense. Disputed that defendants' position was correct.
- See Plum's Separate Statement of Disputed and Undisputed Facts ("PSSF No. ___"), Nos. 4-6, 8, 9-18, 22-36, 53-54, 78-105.
23. Plaintiffs object to this "fact" as compound and vague and ambiguous. Without waiving said objections, disputed. Plaintiffs repeatedly advised defendants they owed a defense against the Harris lawsuit.
- Huver Dec., ¶16 and Ex. 1, Freaner Dep, at 135:3-15; 135:25 - 137:14; 139:3 - 140:7. Defs' Ex. 6, pgs. 153-154.
24. Undisputed defendants sent the letter. Disputed the basis for denying plaintiffs' claim was reasonable or proper. Moreover, the denial letter fully articulated defendants' positions as to the claim and asserted only Exclusion (D)(7), defendants denied any coverage and consciously decided not to defend under a reservation of rights, thereby waiving any other rights it may have had.
- Huver Dec., ¶16 and Ex. 1, Freaner Dep, at 55:17 - 56:18; 58:24 - 59:12; 121:6-12; 121:21 - 122:6; 156:5-19. Huver Dec., ¶17 and Ex. 2, Ringland Dep, at 44:13-17; 142:24 - 143:7; 144:1-21; 178:4-24.

- 1 25. Homeland heard nothing further
2 from Plaintiffs until February
3 16, 2015, when it received a
letter from Plum Healthcare's
president Toby Tilford.
- 4 26. Tilford's letter did not provide
5 any new facts, but asserted that
6 Harris's allegation in paragraph
7 22 that she was not in the course
and scope of employment was
sufficient to trigger the duty to
defend.
- 8 27. Homeland immediately
9 acknowledged the letter and
10 hired independent coverage
11 counsel, Marc Shrake of
Anderson, McPharlin &
Conners, to help evaluate
coverage.
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- 16 28. On March 20, 2015, Shrake sent
17 a letter to Tilford responding to
18 his argument based on
paragraph 22 and concluding
19 that the complaint did not
trigger a duty to defend.
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25. Undisputed.
26. Undisputed that Plum made it clear that Harris could not be an "Insured" if she was outside the course and scope of her duties, as she alleged.
Defs' Ex. 6, pgs. 153-154.
27. Disputed as to the word "immediately." Undisputed that Marc Shrake acted solely for defendants' interests as an advocate. Moreover, defendants are not relying on the advice of counsel as a defense and therefore, Mr. Shrake's involvement is irrelevant.
See Plaintiffs' Objections to Evidence, pg. 4, and Docket No. 19.
28. Undisputed that Mr. Shrake sent a letter dated March 20, 2015. Disputed that it responded to plaintiffs' request to defend them against the Harris lawsuit. Disputed that the duty to defend was not triggered. Moreover, defendants are not relying on the advice of counsel as a defense and therefore, Mr. Shrake's involvement is irrelevant.
See Plaintiffs' Objections to Evidence, pg. 4, and Docket No. 19.

- 1 29. On May 11, 2015, Homeland
2 spoke with Tilford and Paul
3 Hubbard – the co-CEO of Plum
4 Healthcare. Hubbard stated that
5 Harris (i) was an employee at
6 the time of the accident, (ii) was
7 expected to be at the budget
8 retreat as part of her
9 employment, and (iii) was paid
10 for her attendance.
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- 13 30. Homeland heard nothing further
14 from Plaintiffs until early June
15 2015, when it received a letter
16 from Plaintiffs' coverage
17 counsel, William Pruitt of
18 Kirkland & Ellis.
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- 20 31. On June 25, Shrake responded
21 to Pruitt's letter stating that (i)
22 he disagreed with Pruitt's legal
23 analysis, but (ii) Homeland was
24 willing to meet with him and
25 Plaintiffs to try to resolve the
26 dispute.
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29. Undisputed a conversation
30 took place on May 11, 2015.
31 Disputed that Ringland asked
32 or that Hubbard told Ringland
33 that Harris was an "Insured" at
34 the time of the accident per the
35 terms of The Policy, or that
36 Harris was "expected" to ride
37 the ATVs or shoot guns during
38 her free time. Also disputed
39 that Plum was asked if Harris
40 was an "Employee" at the time
41 of the accident. Defendants
42 only asked if Harris was an
43 employee but ignored the
44 course and scope question they
45 now admit was critical.
- 46 Huver Dec., ¶16 and Ex. 1,
47 Freaner Dep, at 71:9-25; 72:23
48 - 73:25. Huver Dec., ¶17 and
49 Ex. 2, Ringland Dep, at 184:25
50 - 185:7; 186:8-12.
- 51 30. Plaintiffs object to this "fact"
52 as irrelevant. Defendants
53 refused to defend plaintiffs
54 against the Harris lawsuit,
55 despite repeated requests.
56 Plaintiffs had no duty to
57 continue to request that
58 defendants comply with their
59 legal and contractual
60 obligations and defend them
61 against Ms. Harris's lawsuit.
- 62 31. Undisputed that Mr. Shrake
63 sent a letter dated June 25,
64 2015. Disputed that it
65 responded to plaintiffs'
66 request to defend them against
67 the Harris lawsuit. Disputed
68 that the duty to defend was not
69 triggered. Moreover,
70 defendants are not relying on
71 the advice of counsel as a
72 defense and therefore, Mr.
73 Shrake's involvement is
74 irrelevant.
- 75 See Plaintiffs' Objections to
76 Evidence, pg. 4, , and Docket
77 No. 19.

- 1 32. On July 21, 2015, the parties
 2 met as Shrake had proposed.
 3 The parties, however, were
 4 unable to reach agreement as to
 5 the duty to defend.
- 6 33. On August 4, 2015, Shrake sent
 7 a letter to Pruitt pointing out
 8 cases that he felt supported the
 9 conclusion that Homeland owed
 10 no duty to defend.
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- 24 34. Plaintiffs admit that Homeland
 25 was “professional” and
 26 “respectful” throughout the
 27 claim handling process.
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32. Undisputed that defendants
 33 persisted in refusing to defend
 34 plaintiffs.
35. Plaintiffs object to this “fact”
 36 on the grounds it calls for
 37 speculation as to the state of
 38 mind of Shrake. However,
 39 without waiving said
 40 objection, undisputed that
 41 Shrake sent the letter relying
 42 on inapposite cases to support
 43 defendants’ wrongful denial of
 44 plaintiffs’ claim and that Mr.
 45 Shrake refused to concede
 46 what Homeland “admits” it
 47 always knew: that if Harris’s
 48 allegations were correct, she
 49 would not be an “Insured” and
 50 she could therefore recover
 51 damages; that Homeland knew
 52 Harris’s allegations were
 53 disputed, unproven and
 54 inconclusive either way.
 55 Moreover, defendants are not
 56 relying on the advice of
 57 counsel as a defense and
 58 therefore, Mr. Shrake’s
 59 involvement is irrelevant.
- 60 Huver Dec., ¶16 and Ex. 1,
 61 Freaner Dep, at 68:25 - 69:25;
 62 85:4-9; 96:18 - 97:13; 101:14-
 63 25; 103:8-14; 106:10-24;
 64 109:5-10. Huver Dec., ¶17 and
 65 Ex. 2, Ringland Dep, at 96:1 -
 66 98:9; 101:12 - 102:8; 106:12 -
 67 107:9; 109:7 - 110:1; 126:14-
 68 25; 130:2-9; 182:7 - 183:2.
 69 See also Plaintiffs’ Objections
 70 to Evidence, pg. 4, and Docket
 71 No. 19.
- 72 34. Plaintiffs object to this “fact”
 73 on the grounds it is misleading
 74 and irrelevant.

1 35. In the litigation with Harris,
 2 Plaintiffs admitted in discovery
 3 responses that “Harris was on a
 4 work-related event at all times
 5 relevant to the subject
 6 litigation” and that her injuries
 7 “arose out of and in the course
 8 of her employment.”
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17 36. The budget retreats, like the one
 18 at which Harris was injured,
 19 were an annual event.
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35. Plaintiffs object to these
 “facts” on the grounds they are
 irrelevant to the issue of the
 duty to defend, which is based
 on the information defendants
 knew at the time of the denial.
 Defendants never knew or
 relied on events that occurred
 during the litigation, which
 was long after they denied
 Plaintiffs’ claim. *See North
 Counties Engineering v. State
 Farm* (2014) 224 Cal.App.4th
 902, 909. Further, plaintiffs
 object to the word “admitted”
 on the grounds it is
 argumentative. Without
 waiving said objections, is it
 undisputed that after
 defendants refused to defend
 Plum against the Harris
 lawsuit, Plum asserted as one
 of several affirmative defenses
 that Ms. Harris’s exclusive
 remedy was workers
 compensation, which she
 disputed. The affirmative
 defenses raised by plaintiffs
 after being denied a defense of
 the Harris lawsuit are not
 conclusive proof.

36. Plaintiffs object to this “fact”
 on the grounds it is vague,
 ambiguous and irrelevant. As
 the incident occurred during
 Harris’s first “budget retreat,”
 what did or did not happen at
 any prior “annual budget
 retreat” is irrelevant. FRE
 402, 403. However, without
 waiving said objections,
 disputed. Harris’s complaint
 alleged the afternoon was for
 free-time, did not involve
 budget-related work, the
 retreat was scheduled for a
 resort in June Lake, CA, not
 Bishop, and the Rhino ATV
 riding was not part of her job
 duties and responsibilities.

PSSF Nos. 55, 57, 61.

- 1 37. The retreats were mandatory for
2 invitees, including Harris.
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- 12 37. Plaintiffs object to this “fact”
13 on the grounds the word
14 “mandatory” is vague and
15 ambiguous, and on the ground
16 the “fact” as phrased is
17 misleading. Moreover,
18 reference to any prior “annual
19 budget retreat” is inadmissible
20 evidence. FRE 402, 403.
21 Without waiving said
22 objections, undisputed that
23 attendance at budget meetings
24 was required. Disputed that
25 recreational activities were
26 required.
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- 12 38. Huver Dec., ¶18 and Ex. 3,
13 Romero Dep, at 34:21 - 35:4;
14 39:17-25; 45:19- 46:8; 56:23 -
15 57:12; 73:24 - 74:12; 74:13-
16 19; 109:6-25.
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- 19 38. Undisputed that was Mr.
20 Romney testified to in
21 deposition. Also undisputed
22 the purpose of the retreat was
23 to work on budgeting, not to
24 ride ATVs or shoot guns.
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- 12 39. Huver Dec., ¶18 and Ex. 3,
13 Romero Dep, at 34:21 - 35:4;
14 35:5-10; 39:17-25; 45:19-
15 46:8; 56:23 - 57:12; 73:24 -
16 74:12; 74:13-19; 109:6-25.
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- 19 39. Disputed. Harris alleged the
20 Rhino ATV activity was not
21 part of her job duties or
22 responsibilities as DON. The
23 ATV riding was a last-minute,
24 surprise change made by Craig
25 Clayton without permission
26 and was not part of the
27 planned agenda. The budget
28 retreat was scheduled for June
Lake, CA, not Bishop, CA.
Undisputed riding ATVs was
not within Harris's job duties
and responsibilities as DON.
This issue remained in dispute
during and was never resolved
in the Harris litigation.

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- 6 40. Upon being informed of the
7 RHINO activity, Harris said she
8 did not want to participate in it,
but she felt compelled to do so.
- 9 41. The Industrial Commission of
10 Arizona twice made findings
11 that Harris "sustained a
12 compensable injury by accident
arising out of and in the course
of employment on 10/22/2013."
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Defs' Ex. 3, pg. 114, ¶15-16,
pg. 115, ¶17, pg. 116, ¶22.
Huver Dec., ¶17 and Ex. 2,
Ringland Dep, at 101:12 -
102:8; 184:25 - 185:7; 186:8-
12. Huver Dec., ¶18 and Ex.
3, Romero Dep, at 45:19 -
46:8; 56:23 - 57:12; 73:24 -
74:12; 74:13-19; 109:6-25.

40. Plaintiffs object to this "fact"
on the grounds the evidentiary
support is hearsay without
exception. FRE 802, 803,
804.
41. Plaintiffs object to this alleged
"fact" on the grounds it is
irrelevant to the duty to defend
issue. The documents are
dated April 21, 2015, 5
months after Homeland's
initial denial. Therefore, these
were not "known" by or relied
on by Homeland before they
denied coverage. Homeland
admitted it only relied on 5
pieces of paper from a
Travelers' workers comp file
as the basis for its denial.

Moreover, there were no legal
"findings" and no adjudication
by any workers compensation
court as to Harris's course and
scope status. Plaintiffs further
object to the term "findings"
as lacking foundation,
assuming facts not in
evidence, and hearsay on the
subject of determining the
legal question of whether
Harris was an "Insured" under
defendants' policy. FRE 602,
701, 702, 802, 803, 804.
Without waiving said
objections, disputed.
Defendants admit there was no
evidence in the 5 pieces of
paper from Travelers at the
time the claim was denied
which conclusively
determined Harris's status re
course and scope.

- 1
2
3
4
5
6
- 7 42. In November 2015, Plaintiffs
8 and Harris settled for \$775,000
9 plus an agreement by Plaintiffs,
to pay a portion of the workers'
compensation insurer's liens.
- 10
11
12
13
- 14 43. Plaintiffs moved for a
15 determination of good faith
settlement.
- 16 44. In moving for a good faith
17 determination, Plaintiffs argued
18 that the settlement was within the
19 *Tech-Bilt* " ballpark" because (i)
20 Harris was an employee, (ii) the
injury occurred during a
"corporate team building
activity" during an "organized
budget retreat," and (iii)
therefore, workers'
compensation was Harris'
exclusive remedy.
- 21
22
23
24
25
26 45. The superior court granted
27 Plaintiffs' motion for a good
faith settlement determination.
- 28

Huver Dec., ¶16 and Ex. 1,
Freaner Dep, at 68:25 - 69:25;
85:4-9; 86:20 - 87:9; 91:6-9;
96:18 - 97:13; 101:14-25;
103:8-14; 106:10-24; 109:5-
10; 181:22 - 182:1; 184:4-17;
184:18-22; 185:15-25; 186:23
- 187:10. Huver Dec., ¶17 and
Ex. 2, Ringland Dep, at 81:5-
17; 94:5-18.

- 7 42. Undisputed that after
defendants refused to defend
or indemnify Plum, they
reached a settlement to avoid
potential liability in excess of
\$4,000,000, potential exposure
on multiple cross-complaints,
and additional legal expenses
of at least \$200,000.
- 12
13
- Declaration of William Wilson
("Wilson Dec., ¶____"), ¶4-9.
- 14 43. Undisputed.
- 16
17
18
19
20
21
22
23
24
25
26 44. Undisputed Plum referenced
various affirmative defenses
raised in the Harris lawsuit in
support of their motion for a
good faith settlement. Also
undisputed the settlement was
reached to avoid potential
exposure in excess of
\$4,000,000, potential exposure
on multiple cross-complaints,
and additional legal expenses
of at least \$200,000. Disputed
that the affirmative defenses
somehow equate to conclusive
proof of any issue.
- 27
28
- Wilson Dec., ¶4-9.
45. Undisputed.

1 46. In total, Plaintiffs' defense costs
 2 during the entirety of the Harris
 3 litigation were only about
 4 \$112,500.

5
 6
 7 46. Undisputed that plaintiffs
 8 incurred \$112,500 in legal
 9 expenses and \$825,000 in
 10 losses related to the settlement
 11 with Ms. Harris and Travelers,
 12 for total damages under The
 13 Policy of \$937,500, plus
 14 interest.

15
 16 Pursuant to Local Rule 7.1(f)(3), Plum submits the following statement of
 17 disputed and undisputed material facts in opposition to Homeland's motion for
 18 summary judgment or partial summary judgment.

19
**DISPUTED/UNDISPUTED FACTS AND EVIDENCE IN OPPOSITION
 TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

20
**ISSUE: HOMELAND HAS ADMITTED THE FOLLOWING FACTS
 BY VIRTUE OF FAILING TO TIMELY RESPOND TO
 PLUM'S REQUESTS FOR ADMISSION**

21
**Plaintiffs' Disputed/Undisputed
 Material Facts and Supporting
 Evidence:**

22 1. Janice Harris' injury on
 23 October 22, 2013 involved a
 24 "non-owned" vehicle.

25
 26 Huver Dec., ¶12 and Ex. 10,
 27 pg. 187, RFA No. 1.

28 2. Exclusion (B)(9) did not
 29 preclude coverage for the
 30 claim made by Janice Harris
 31 against your insureds.

32
 33 Huver Dec., ¶12 and Ex. 10,
 34 pg. 187, RFA No. 2.

35 3. Homeland was not aware of
 36 any available automobile
 37 coverage for GI Plum for the
 38 claims made by Janice Harris.

39
 40 Huver Dec., ¶12 and Ex. 10,
 41 pg. 187, RFA No. 3.

42
**Defendants' Response and
 Supporting Evidence:**

43 1.

44 2.

45 3.

1 4. Janice Harris' complaint
2 alleged that she was not in the
3 course and scope of her job at
4 the time she was injured on
5 October 22, 2013.

6 Huver Dec., ¶12 and Ex. 10,
7 pg. 187, RFA No. 4.
8
9

10 5. If the allegations in paragraph
11 22 of Janice Harris' complaint
12 were true, she would not have
13 been an "insured" at the time
14 of her injury on October 22,
15 2013.

16 Huver Dec., ¶12 and Ex. 10,
17 pg. 187, RFA No. 5.
18
19

20 6. No judge or jury had ever
21 determined if Janice Harris
22 was or was not in the course
23 and scope of her job duties
24 when she was injured on
25 October 22, 2013.

26 Huver Dec., ¶12 and Ex. 10,
27 pg. 187, RFA No. 6.
28
29

30 7. Homeland Insurance is a
31 wholly owned subsidiary of
32 One Beacon Professional
33 Insurance Company.

34 Huver Dec., ¶12 and Ex. 10,
35 pg. 187, RFA No. 7.
36
37

38 8. Homeland should have
39 provided a legal defense to
40 plaintiffs Plum Healthcare and
41 GI Plum Holdco in the Janice
42 Harris lawsuit.

43 Huver Dec., ¶12 and Ex. 10,
44 pg. 187, RFA No. 8.
45
46 ///
47
48 ///
49
50 ///
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52 ///

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1 **ISSUE: THE FACTUAL ALLEGATIONS IN HARRIS'S LAWSUIT
2 ALLEGED A COVERED CLAIM THAT TRIGGERED
3 HOMELAND'S DUTY TO DEFEND**

3 **Plaintiffs' Disputed/Undisputed
4 Material Facts and Supporting
5 Evidence:**

5. The Policy required Homeland
6 to defend Plum against the
7 Harris lawsuit.

7 Defs' Ex. 1, pgs. 11, 43-44, 46-
8 48, 51-52, 63. See also Defs'
9 Separate Statement of Facts
("DSSF"), Nos. 1, 2, 4, 5.

10. Plaintiffs herein were Insureds
11 under the terms of The Policy
12 when the Harris lawsuit was
13 tendered for a defense.

13 Docket No. 10, Defs' Answer to
14 Complaint, pg. 3, ¶¶ 8, 9, 10,
15 11. See also DSSF Nos. 1, 2, 4,
16 5.

15. Paragraph 14 of Harris's
16 complaint contained the
17 following specific factual
18 allegation:

18 On October 22, 2013, at
19 approximately 5:00 p.m.,
20 Plaintiff JAN HARRIS was
21 severely injured while riding as
22 a passenger in a modified
23 Yamaha Rhino side-by-side off-
24 road vehicle (hereinafter the
25 "SUBJECT RHINO")
26 negligently, wantonly and
27 recklessly operated by
28 Defendant CHRISTOPHER
ROMNEY.

24 Defs' Ex. 1, pg. 114, ¶14.

26 / / /

27 / / /

28 / / /

3 **Defendants' Response and
4 Supporting Evidence:**

9.

10.

11.

- 1 12. Paragraph 15 of Harris's
2 complaint contained the
3 following specific factual
4 allegations:
5
6 Plaintiff had (sic) travelled to
7 Bishop, California for the
8 purpose of attending a budget
9 retreat organized and arranged
10 by PLUM HEALTHCARE
11 ENTITIES and Defendants
12 ROMNEY, QUINCE,
13 CLAYTON, CLAWSON and
14 the BISHOP CARE CENTER.
15 The location of the planned
16 retreat was at a resort hotel in
17 June Lake, California. ...
18
19 Defs' Ex. 1, ¶15, pg. 114.
- 20 13. Paragraph 16 of Harris's
21 complaint contained the
22 following factual allegations:
23
24 “Plaintiff arrived in Bishop,
25 California on the afternoon of
26 October 22, 2013, where she
27 met with the other individuals
28 [sic] travelling to the retreat.
29 After eating a box lunch at
30 Defendants LAWS RAILROAD
31 MUSEUM, all present,
32 including Plaintiff, were
33 supposed to have the afternoon
34 free to shop at stores along
35 Main Street in Bishop. The
36 agenda for the retreat, which
37 was circulated to attendees
38 beforehand, planned for
39 “shopping along Bishop’s Main
40 Street,” prior to departing for
41 June Lake. ...for the retreat.”
42
43 Defs' Ex. 3, pg. 114-115, ¶16.
- 44 14. Paragraph 17 of Harris's
45 complaint contained the
46 following specific factual
47 allegations:
48
49 “However, after eating lunch at
50 the LAWS RAILROAD
51 MUSEUM, it was announced to

12.

13.

14.

Plaintiff and the other attendees that a surprise change had been made to the agenda. Plaintiff and the other attendees were driven in vans a short distance to an outdoor location, where a shooting range and several Yamaha Rhino side-by-side off-road vehicles were parked. ... Plaintiff and others were told not to speak with anyone about this surprise change in the agenda, because permission had not been obtained to engage in the shooting and off-road activities. ...”

Defs' Ex. 3, pg. 115, ¶17.

11. Paragraph 22 of Harris's
12. complaint contained the
13. following specific factual
allegation:

14. "These events and Plaintiff's
severe injuries occurred outside
the scope of her employment as
QUINCE's director of nursing.
The Rhino and shooting
activities that occurred on
October 22, 2013 were
unplanned and unrelated to
Plaintiff's work duties as
Director of Nursing, but rather
involved participation in an off-
duty event negligently
organized, planned and carried
out by Defendants."

15. Defs' Ex. 3, pg. 116, ¶22.

16. The specific factual allegations
in Harris' complaint, including
paragraphs 14, 15, 16, 17 and
22, if proven true, asserted at
least a potentially covered claim
and therefore triggered
Homeland's duty to defend
Plum.

Defs' Ex. 1, pgs. 11, 43-44, 46-48, 51-52, 63. Huver Dec., ¶¶16 and Ex. 1, Freaner Dep, at 62:16

1 - 63:4; 78:25 - 77:23; 95:23 -
 2 96:5; 116:10-14; 149:23 -
 3 150:5. Huver Dec., ¶17 and Ex.
 4 2, Ringland Dep, at 29:11-19;
 5 154:23 - 155:19.

6 17. Homeland did not know if
 7 Harris's allegations in
 8 paragraphs 14, 15, 16, 17 and 22
 9 were true or false when they
 10 denied Plum a defense.

11 Huver Dec., ¶16 and Ex. 1,
 12 Freaner Dep, at 80:20 - 81:19;
 13 95:23 - 96:5; 116:10-14; 149:23
 14 - 150:5. Huver Dec., ¶17 and
 15 Ex. 2, Ringland Dep, at 96:1 -
 16 98:9; 101:12 - 102:8; 106:12 -
 17 107:9; 109:7 - 110:1; 126:14-
 18 25; 130:2-9.

19 18. Harris's complaint alleging
 20 bodily injuries based on claims
 21 of negligence against Plum and
 22 others was a covered claim.

23 Huver Dec., ¶17 and Ex. 2,
 24 Ringland Dep, at 154:23 -
 25 155:19.

26 19. Plum Healthcare Group, LLC,
 27 incurred \$112,500 in attorneys
 28 fees and costs to defend against
 1 the Harris v. Plum Healthcare
 2 Group, LLC, et al., lawsuit.

3 Wilson Dec., ¶10, and Ex. 6,
 4 pgs. 6-62.

5 20. The Policy's \$250,000
 6 deductible applied to the
 7 combined legal defense
 8 expenses of \$112,500, and the
 9 \$825,000 settlement under the
 10 indemnity coverage for
 11 "Losses."

12 Def's Ex. 1, Section
 13 IV(A)(7)(a), pgs. 64-65.

14 // /

15 17.

16 18.

17 19.

18 20.

- 1 21. Homeland's obligation to
2 indemnify a "Loss" is in excess
3 of \$250,000, but the duty to
4 defend is triggered immediately
5 upon tender of a claim or a
6 potentially covered claim.

5 Defs' Ex. 1, Section I(F), pg. 44
and Section IV(A)(7)(a), pgs.
64-65.

ISSUE: THE 5 PIECES OF PAPER FROM TRAVELERS' WORKERS COMPENSATION FILE DID NOT CONCLUSIVELY ESTABLISH HARRIS WAS IN THE COURSE AND SCOPE OF HER JOB DUTIES WHEN INJURED

Plaintiffs' Disputed/Undisputed Material Facts and Supporting Evidence:

Defendants' Response and Supporting Evidence:

22. The only “extrinsic” documents Homeland relied on to deny Plum a defense were the 5 pieces of paper from Travelers’ file which merely showed Harris had received some benefits from an open workers comp claim.

Huver Dec., ¶16 and Ex. 1,
Freaner Dec, at 86:20 - 87:9;
181:22 - 182:1; 184:4-17.
Huver Dec., ¶17 and Ex. 2,
Ringland Dep, at 94:5-18.

23. When Homeland denied Plum a defense, they knew Harris had not hired an attorney to represent her for her workers comp claim.

Huver Dec., ¶17 and Ex. 2,
Ringland Dep, at 91:14 -
92:13.

24. The 5 pieces of paper from Travelers' workers comp file did not conclusively negate the possibility that Harris's complaint alleged a potentially covered claim.

22

23.

24

Huver Dec., ¶16 and Ex. 1,
Freaner Dep, at 85:4-9; 91:6-
9; 184:18-22; 185:15-25;
186:23 - 187:10. Huver Dec.,
¶17 and Ex. 2, Ringland Dep,
at 81:5-17; 94:5-18.

25. None of the 5 pieces of paper from Travelers' workers comp file indicated a legal adjudication had been made that Harris was in the course and scope of her job duties when she was injured.

25.

Huver Dec., ¶16 and Ex. 1,
Freaner Dep, at 184:18-22;
185:15-25; 186:23 - 187:10.
Huver Dec., ¶17 and Ex. 2,
Ringland Dep, at 81:5-17;
94:5-18.

26. Homeland did not have any information that a formal determination had been made by any workers comp judge or appeals board that Harris was in the course and scope of her job duties when they denied Plum's claim for a defense.

26

Huver Dec., ¶16 and Ex. 1,
Freaner Dep, at 68:25 - 69:25;
85:4-9; 91:6-9; 184:18-22;
185:15-25; 186:23 - 187:10.
Huver Dec., ¶17 and Ex. 2,
Ringland Dep, at 81:5-17.

27. Homeland never informed Travelers that Harris had filed a civil lawsuit alleging she was not within the course and scope of her job duties.

27

Huver Dec., ¶16 and Ex. 1,
Freaner Dep, at 74:2-11.
Huver Dec., ¶17 and Ex. 2,
Ringland Dep, at 83:15 - 84:6.

28 | / / /

1 28. There is no exclusion in The
 2 Policy which negates coverage
 3 just because Harris was
 4 pursuing both a workers comp
 5 claim and a civil lawsuit.

6

7 Huver Dec., ¶17 and Ex. 2,
 8 Ringland Dep, at 120:8-11;
 9 124:3-8.

10

11 **ISSUE: HOMELAND DID NOT CONCLUSIVELY ESTABLISH THE
 12 “INSURED V. INSURED” EXCLUSION (D)(7) NEGATED
 13 COVERAGE. HARRIS’S COURSE AND SCOPE ISSUE WAS
 14 IN DISPUTE WHEN HOMELAND REFUSED TO DEFEND
 15 PLUM**

16

17 **Plaintiffs’ Disputed/Undisputed
 18 Material Facts and Supporting
 19 Evidence:**

20 29. The only policy exclusion
 21 Homeland relied on to deny
 22 Plum a defense was the
 23 “Insured v. Insured”
 24 Exclusion (D)(7).

25

26 Huver Dec., ¶16 and Ex. 1,
 27 Freaner Dep, at 121:6-12;
 28 121:21 - 122:6; 137:15 -
 29 138:11. Huver Dec., ¶17 and
 30 Ex. 2, Ringland Dep, at 142:24
 31 - 143:7; 144:1-21; 178:2-24.
 32 Defs’ Ex. 5, pgs. 147-151.

33

34 30. Homeland knew Exclusion
 35 (D)(7) would only apply if
 36 Harris was an “Insured” as
 37 defined by The Policy,
 38 requiring that she was both (1)
 39 an “Employee” and (2) “only
 40 when such Employee ... is
 41 acting within the capacity
 42 and scope of his or her duties
 43 as such;...”

44

45 Defs’ Ex. 1, Section II,
 46 Definitions (T)(2), pgs. 47-48.
 47 (Emphasis added.) Huver
 48 Dec., ¶16 and Ex. 1, Freaner
 49 Dep, at 78:6-15; 94:25 -
 50 95:22; 95:23 - 96:5; 113:15 -

28.

29

30 **Defendants’ Response and
 31 Supporting Evidence:**

32

33 29.

34

35 30.

1 114:4; 116:10-14; 123:6-19;
 2 124:9-20; 126:2-9; 149:23 -
 3 150:5. Huver Dec., ¶17 and
 Ex. 2, Ringland Dep, at 103:8-
 23; 104:11-15; 105:21 - 106:4.

4 31. Homeland knew if Harris's 31.
 5 allegations in her complaint,
 6 including paragraphs 14, 15,
 7 16, 17 and 22, were true,
 8 Harris would not be an
 "Insured" under the terms of
 the Policy and the "Insured v.
 Insured" Exclusion (D)(7)
 would not negate coverage.

9 Huver Dec., ¶16 and Ex. 1,
 10 Freaner Dep, at 78:6-15; 94:25
 - 95:22; 95:23 - 96:5; 116:10-
 14; 123:6-19; 124:9-20;
 126:2-9; 149:23 - 150:5.
 12 Huver Dec., ¶17 and Ex. 2,
 13 Ringland Dep, at 103:9-23;
 104:11-15; 105:21 - 106:4.

14 32. Homeland knew Exclusion 32.
 15 (D)(7) did not apply just
 16 because Harris was receiving
 workers comp benefits.

17 Huver Dec., ¶16 and Ex. 1,
 18 Freaner Dep, at 123:6-19;
 124:9-20; 126:2-9. Huver
 Dec., ¶17 and Ex. 2, Ringland
 Dep, at 120:8-11; 124:3-8.

20 33. The only documents which 33.
 21 Homeland relied on for
 22 asserting the "Insured v.
 23 Insured" Exclusion (D)(7)
 24 were the 5 pieces of paper
 from Travelers' workers
 compensation files.

25 Huver Dec., ¶16 and Ex. 1,
 26 Freaner Dep, at 86:20 - 87:9;
 181:22 - 182:1; 184:4-17.

27 / / /

28 / / /

- 1 34. Homeland based its entire 34.
2 decision to deny Plum a
3 defense on the 5 pieces of
4 paper from the Travelers file.
5
6 Huver Dec., ¶16 and Ex. 1,
7 Freaner Dep, at 86:20 - 87:9;
8 181:22 - 182:1; 184:4-17.
9
10 35. No judge or jury had decided 35.
11 that Harris was in the course
12 and scope of her job duties and
13 responsibilities when she was
14 injured when Homeland
15 denied Plum's claim.
16
17 Huver Dec., ¶16 and Ex. 1,
18 Freaner Dec, at 68:25 - 69:25;
19 85:4-9; 96:18 - 97:13; 101:14-
20 25; 103:8-14; 106:10-24;
21 109:5-10. Huver Dec., ¶17 and
22 Ex. 2, Ringland Dep, at 81:5-
23 17; 182:7 - 183:2.
24 ///
25 ///
26 ///
27 ///
28 ///

1 **ISSUE: IF HOMELAND IS PERMITTED TO ASSERT NEW
2 COVERAGE DEFENSES, HOMELAND HAS FAILED TO
3 CONCLUSIVELY ESTABLISH EITHER EXCLUSION (D)(2)
4 OR (D)(5) NEGATED HOMELAND'S DUTY TO DEFEND**

4 **Plaintiffs' Disputed/Undisputed
5 Material Facts and Supporting
6 Evidence:**

7 37. Homeland contends Exclusion
8 (D)(2) precludes coverage
9 solely because "notice" of
Harris's workers comp "claim"
was provided to Plum's
workers comp insurer
Travelers.

10 Defs' Motion, pg. 11.

11 38. The Policy does not provide
12 coverage for workers
compensation claims.

13 Defs' Ex. 1.

14 39. Exclusion (D)(2) does not
15 apply because "notice" of a
workers compensation claim
has no bearing on The Policy's
coverage.

16 Defs' Ex. 1.

17 40. Exclusion (D)(2) provides in
18 relevant part:

19 "Except as otherwise expressly
20 provided in this Policy, this
Policy does not apply to, and
the Underwriter will not pay
Loss or Defense Expenses, for
any **Claim** based upon, arising
out of, directly or indirectly
resulting from, in consequence
of, or in any way involving
any actual or alleged:

21 * * *

22 (2) act, error, omission.
Occurrence, Wrongful Act,
event, suit or demand which
was the subject of any notice
given under any other policy

5 **Defendants' Response and
6 Supporting Evidence:**

7 37.

8 38.

9 39.

10 40.

1 of insurance or plan or
2 program of self-insurance in
3 effect prior to the Inception
4 Date set forth in ITEM 2 of the
5 Declarations.”

6 Defs’ Ex. 1, pg. 61.

7 41. “**Claim**” is defined as “any
8 written notice received by an
9 Insured that any person or
10 entity intends to hold an
11 Insured responsible for a
12 **Wrongful Act** or an
13 **Occurrence**.”

14 41.

15 9 Defs’ Ex. 1, pg. 46.
16 10 42. “**Occurrence**” is defined as:
17 11 “(1) with respect to **Bodily**
18 12 **Injury or Property Damage**,
19 13 an accident, including
20 14 continuous or repeated
21 15 exposure to substantially the
22 16 same harmful conditions,
23 17 which results in injury or
24 18 damage neither expected nor
25 19 intended by the Insured; and

20 42.

21 16 (2) with respect to Advertising
22 17 Injury or Personal Injury, a
23 18 covered offense as set forth in
24 19 DEFINITIONS (C) or
25 20 DEFINITIONS (FF) of this
26 21 Policy.”

27 19 Defs’ Ex. 1, pg. 51.

28 21 43. “**Wrongful Act**,” is defined as
29 22 “any **Professional Services**
30 23 **Wrongful Act or Employee**
31 24 **Benefit Wrongful Act**,”
32 25 neither of which involve a
33 claim for workers
34 compensation benefits or
35 Harris’s lawsuit for bodily
36 injuries.

37 43.

38 26 Defs’ Ex. 1, pgs. 47, 53-55.

39 27 / / /

40 28 / / /

- 1 44. Harris's workers 44.
 2 compensation claim did not
 3 involve allegations that Plum
 4 was liable for either an
 5 **Occurrence** or a **Wrongful**
 6 **Act** as defined by The Policy.
 7
 8 Def's Ex. 1, pg. 46, 47, 51, 53-
 9 55.
 10
 11 45. Exclusion (D)(2) does not 45.
 12 apply because the first
 13 "written notice" Plum received
 14 regarding Harris's bodily
 15 injury lawsuit was when they
 16 were served with Harris's
 17 complaint shortly before
 18 tendering the claim for a
 19 defense to Homeland.
 20
 21 Def's Ex. 3, pgs. 106-130.
 22 Freaner Dec., ¶4, 5 and Exs. 2
 23 and 3 thereto.
 24
 25 46. The first insurer Plum 46.
 26 provided "notice" to of
 27 Harris's bodily injury lawsuit
 28 was Homeland.
 29
 30 Freaner Dec., ¶4, 5 and Exs. 2
 31 and 3 thereto.
 32
 33 47. The defined terms "**Claim**," 47.
 34 "**Occurrence**" and "**Wrongful**
 35 **Act**" do not pertain to or
 36 involve Harris's claim for
 37 workers compensation
 38 benefits.
 39
 40 Def's Ex. 1, pgs. 46, 51, 61.
 41
 42 48. Exclusion (D)(2) does not 48.
 43 apply by its own terms
 44 because Harris's lawsuit
 45 sought damages for bodily
 46 injuries, not workers
 47 compensation benefits.
 48
 49 Def's Ex. 1, pgs. 46, 51, 61.
 50
 51 / / /
 52
 53 / / /

1 49. Harris's lawsuit for bodily
 2 injuries did not involve a
 3 claim for a "**Professional**
Services Wrongful Act" or an
 4 "**Employee Benefit Wrongful**
Act" as those terms are
 defined in The Policy.

5 Def's Ex. 1, pgs. 47, 53-55.
 6 Def's Ex. 3, ¶21, pg. 116; ¶29,
 pg. 118; and ¶31, pg. 119.

7 50. When Homeland denied
 8 Plum's claim, even though
 9 claims adjuster Freaner and
 10 claims manager Ringland
 11 discussed Exclusion (D)(5),
 12 the only exclusion they agreed
 13 might apply was the "Insured
 v. Insured" Exclusion (D)(7).

12 Huver Dec., ¶16 and Ex. 1,
 13 Freaner Dep, at 55:17 - 56:18;
 14 58:24 - 59:12 121:6-12;
 15 121:21 - 122:6; 137:15 -
 16 138:11. Huver Dec., ¶17 and
 17 Ex. 2, Ringland Dep, at 142:24
 18 - 143:7; 144:1-21. Defs' Ex.
 19 5, pgs. 147-151.

20 51. By its specific terms, the
 21 "Workers Compensation"
 22 Exclusion (D)(5) does not
 23 apply to this claim because
 24 Harris's lawsuit sought
 25 damages for bodily injuries,
 26 not benefits for a workers
 27 compensation claim.

28 Def's Ex. 1, pgs. 46, 51, 61.
 29 Def's Ex. 3, pgs. 106-130.

30 ///

31 ///

32 ///

33 ///

34 ///

35 ///

49.

50.

51.

1 **ISSUE: IF HOMELAND IS PERMITTED TO LITIGATE THE ISSUE**
 2 **OF HARRIS'S COURSE AND SCOPE FOR PURPOSES OF**
 3 **DETERMINING ITS DUTY TO INDEMNITY PLUM,**
 4 **HOMELAND HAS FAILED TO MEET THEIR BURDEN OF**
 5 **CONCLUSIVELY ESTABLISHING THAT ANY POLICY**
 6 **EXCLUSION PRECLUDED COVERAGE. THEREFORE,**
 7 **HOMELAND IS REQUIRED TO INDEMNIFY PLUM FOR**
 8 **THE FULL AMOUNT OF THE HARRIS SETTLEMENT**

6 **Plaintiffs' Disputed/Undisputed**
 7 **Material Facts and Supporting**
 8 **Evidence:**

9 52. Plum refers to and
 10 incorporates herein by
 reference PSSF Nos. 1-51 and
 all supporting evidence.

11 53. No court has ever ruled as a
 12 matter of law that Janice
 13 Harris was acting within the
 14 course and scope of her job
 duties and responsibilities as
 DON for Pueblo Springs when
 she was injured.

15 Huver Dec., ¶16 and Ex. 1,
 16 Freaner Dep, at 68:25 - 69:25.
 17 Huver Dec., ¶17 and Ex. 2,
 Ringland Dep, at 81:5-17;
 182:7 - 183:2.

18 54. No jury ever rendered a
 19 verdict finding that Janice
 20 Harris was acting within the
 21 course and scope of her job
 duties and responsibilities as
 DON for Pueblo Springs when
 she was injured.

22 Huver Dec., ¶16 and Ex. 1,
 23 Freaner Dep, at 68:25 - 69:25;
 24 85:4-9; 96:18 - 97:13; 101:14-
 25; 103:8-14; 106:10-24;
 109:5-10. Huver Dec., ¶17
 and Ex. 2, Ringland Dep, at
 182:7-19.

27 / / /

28 / / /

6 **Defendants' Response and**
 7 **Supporting Evidence:**

8 52.

9 53.

10 54.

- 1 55. Janice Harris had been the
2 Director of Nursing for Pueblo
3 Springs for about 6 months
when she was notified about
the June Lake budget retreat.
4 Huver Dec., ¶19 and Ex. 4,
5 Deposition of Janice Nargi
6 (formerly Janice Harris)
("Nargi Dep."), at 70:7-9.

7 56. John Romero was the Facility
8 Rehabilitation Director for
9 Pueblo Springs at the time of
the June Lake budget retreat.
10 Huver Dec., ¶18 and Ex 3,
Romero Dep, at 12:11-24.

11 57. Harris's job duties and
12 responsibilities as DON did
13 not include planning for the
budget retreat.
14 Huver Dec., ¶18, and Ex. 3,
Romero Dep, at 26:23 - 28:7.

15 58. Harris's job duty as DON was
16 having full responsibility for
17 the nursing department at
18 Pueblo Springs, including
providing social services and
activities for the patients.
19 Huver Dec., ¶19 and Ex. 4,
Nargi Dep., at 30:15-19.

20 59. The purpose for the June Lake
21 budget retreat was to set the
22 2014 budget for Pueblo
23 Springs, see where things
stood at the Pueblo facility and
set goals for 2014.
24 Huver Dec., ¶18 and Ex. 3,
Romero Dep, at 35:5-10.

25

26 / / /

27 / / /

28 / / /

- 1 60. The printed agenda for the 60.
2 June Lake budget retreat was
3 sent to Harris and Romero
4 shortly before the retreat, and
5 did not mention riding ATVs
6 or shooting guns as planned
7 activities.
8
9 Def's Ex. 1, pgs. 114-115,
10 ¶16. Huver Dec., ¶18 and Ex.
11 3, Romero Dep, at 29:10-13;
12 30:9-24; 31:7-25; 32:3-5.
13 Huver Dec., ¶20 and Ex. 5, pg.
14 172.
15
16 61. The June Lake budget retreat 61.
17 was the first budget retreat
18 Harris had attended.
19
20 Huver Dec., ¶18 and Ex. 3,
21 Romero Dep, at 34:21-35:4.
22
23 62. The budget retreat had been 62.
24 allegedly negligently planned
25 and organized by Bishop Care
26 Center and Plum Healthcare
27 Group, LLC.
28
29 Defs' Ex. 1, pg. 114, ¶15.
30
31 63. Janice Harris was not an 63.
32 employee of either Bishop
33 Care Center or Plum
34 Healthcare Group, LLC.
35
36 Huver Dec., ¶19 and Ex. 4,
37 Nargi Dep, at 30:7-19.
38
39 64. Harris understood that after 64.
40 they had lunch in Bishop, she
41 was supposed to have the
42 afternoon off for free time
43 before leaving for the budget
44 retreat which was being held
45 at a resort hotel in June Lake,
46 CA.
47
48 Huver Dec., ¶19 and Ex. 4,
49 Nargi Dep, at 139:16 - 140:12;
50 141:2 - 142:1. Defs' Ex. 3, pgs.
51 114-115, ¶16.

- 1 65. However, after lunch, Scott 65.
2 Clawson announced there
3 were surprise activities - a
4 shooting range and Rhino
5 ATVs.
6
7 Huver Dec., ¶18 and Ex. 3,
8 Romero Dep, at 53:2-25;
9 54:21-25; 56:8-22. Defs' Ex.
10 3, pgs. 114-115, ¶¶15, 16.
11
12 66. The shooting range and Rhino 66.
13 ATVs were not part of the
14 printed agenda for the June
15 Lake budget retreat.
16
17 Huver Dec., ¶18 and Ex. 3,
18 Romero Dep, at 56:23 - 57:12.
19 Huver Dec., ¶20 and Ex. 5, pg.
20 172.
21
22 67. Harris was not injured at the 67.
23 location where the budget
24 retreat was scheduled to take
25 place - a resort hotel in June
26 Lake - but rather in Bishop.
27
28 Defs' Ex. 1, ¶¶14, 15, 16, 17,
29 22, pgs. 114-116.
30
31 68. Participation in voluntary, 68.
32 recreational activities at
33 Plum's budget retreat was not
34 within the job duties and
35 responsibilities of Janice
36 Harris as the DON.
37
38 Huver Dec., ¶18 and Ex. 3,
39 Romero Dep, at 39:17-25;
40 45:19 - 46:8; 73:24 - 74:12;
41 74:13-19; 109:6-25.
42
43 69. Generally at Plum budget 69.
44 retreats, any voluntary,
45 recreational or free-time
46 activities that might occur
47 outside of the budget meetings
48 were not mandatory for
49 employees to attend.
50
51 Huver Dec., ¶18 and Ex. 3,
52 Romero Dep, at 39:17-25.

- 1 70. Harris and others were 70.
2 instructed not to tell anyone
3 about the surprise ATV and
4 gun range activities because
5 they had not been approved.
6
7 Defs' Ex. 3, pg. 115, ¶17.
8
9 71. While riding in the ATV, it 71.
10 rolled over, and Harris
11 suffered injuries to her right
12 leg and ankle, multiple
13 surgeries, incurred significant
14 medical expenses and alleged
15 a significant loss of earnings.
16
17 Defs' Ex. 3, ¶21, pg. 116; ¶29,
18 pg. 118; and ¶31, pg. 119.
19 Wilson Dec., ¶4, 5.
20
21 72. Plum's settlement of the 72.
22 Harris lawsuit occurred after a
23 mediation before a neutral
24 mediator, and was not the
25 product of fraud or collusion.
26
27 Wilson Dec., ¶9.
28
29 73. Homeland was invited to 73.
30 attend the Harris mediation but
31 refused to do so.
32
33 Huver Dec., ¶16 and Ex. 1,
34 Freaner Dep, at 169:8-25;
35 170:11-25. Wilson Dec., ¶9.
36
37 74. Plum Healthcare Group, LLC, 74.
38 paid \$775,000 to Janice Harris
39 to settle her bodily injury
40 claims alleged in the Harris v.
41 Plum Healthcare lawsuit only.
42
43 Wilson Dec., ¶9, 11, and Ex.
44 7, pg. 63.
45
46 75. Plum's settlement of the 75.
47 Harris lawsuit for \$825,000
48 was reasonable. The case had
49 a potential jury verdict range
50 of \$4 - 5,000,000, mounting
51 legal fees, and exposure to
52 multiple cross-complaints.
53
54 Wilson Dec., ¶4-9.

- 1 76. Plum Healthcare Group, LLC, 76.
 2 paid \$50,000 to Travelers
 3 Insurance Company to resolve
 4 the workers comp lien claim.
 5
 6 Wilson Dec., ¶12, and Ex. 8,
 7 pgs. 64-65.

6 **ISSUE: HOMELAND'S REFUSAL TO DEFEND AND INDEMNIFY**
 7 **PLUM AGAINST THE HARRIS LAWSUIT WAS**
 8 **UNREASONABLE AND IN BAD FAITH**

9 **Plaintiffs' Disputed/Undisputed**
 10 **Material Facts and Supporting**
 11 **Evidence:** **Defendants' Response and**
 12 **Supporting Evidence:**

- 13 77. Plum refers to and 77.
 14 incorporates herein by
 15 reference PSSF Nos. 1-76 and
 16 all supporting evidence.
- 17 78. Homeland intentionally 78.
 18 rejected the factual allegations
 19 set forth in paragraphs 14, 15,
 20 16, 17 and 22 of Harris's
 21 complaint in order to justify its
 22 refusal to defend Plum.
 23 Huver Dec., ¶16 and Ex. 1,
 24 Freaner Dep, at 62:16 - 63:4;
 25 115:8-14; 131:4-14; 143:9 -
 26 144:10. Huver Dec., ¶23 and
 27 Ex. 14, pgs. 202-206, ¶25-32,
 28 36-37, 42-48.
- 29 79. Homeland never looked for 79.
 30 facts that would have
 31 supported Harris's allegations
 32 that she was outside the course
 33 and scope of her job duties.
 34 Huver Dec., ¶16 and Ex. 1,
 35 Freaner Dep, at 70:15-20;
 36 71:9-25; 72:23 - 73:25; 75:6-
 37 24; 75:25 - 77:23. Huver
 38 Dec., ¶17 and Ex. 2, Ringland
 39 Dep, at 96:1 - 98:9; 130:10 -
 40 131:4; 184:25 - 185:7; 186:8-
 41 21. Huver Dec., ¶23 and Ex.
 42 14, pg. 204, ¶36-37.

- 1 80. Homeland refused to defend
2 Plum despite knowing they
3 were required to do so even if
4 there was just a “potentially”
5 covered claim for which it
6 might turn out later there was
7 no covered claim.

8 Huver Dec., ¶16 and Ex. 1,
9 Freaner Dep, at 116:19 -
10 117:2; 117:11-25; 118:14-20;
11 119:3-6.

12 81. Homeland denied Plum’s
13 claim knowing they had not
14 conclusively established any
15 exclusion negated coverage.

16 Huver Dec., ¶16 and Ex. 1,
17 Freaner Dep, at 116:19 -
18 117:2; 117:11-25; 118:14-20;
19 119:3-6. Huver Dec., ¶17 and
20 Ex. 2, Ringland Dep, at 101:12
21 - 102:8; 103:8-23; 104:11-15;
22 106:12 - 107:9; 109:7 - 110:1;
23 130:2-9.

24 82. Homeland claimed it was
25 “confused” by contradictions
26 between Harris’s lawsuit and
27 her workers comp claim, but
 failed to comply with their
 obligation to resolve doubts
 about whether facts in Harris’s
 lawsuit triggered their duty to
 defend in favor of coverage
 for Plum.

28 Huver Dec., ¶16 and Ex. 1,
29 Freaner Dep, at 63:20 - 64:16;
30 127:7 - 128:2; 143:9 - 144:10.
31 Huver Dec., ¶17 and Ex. 2,
32 Ringland Dep, at 78:8-22;
33 79:12 - 80:2; 112:4-14.

34 83. Homeland denied Plum’s
35 claim for a defense knowing
36 they had no idea what the
37 ultimate outcome would be of
38 either Harris’s civil lawsuit or
39 her workers comp claim.

1 Huver Dec., ¶16 and Ex. 1,
2 Freaner Dep, at 150:17-19.
3 Huver Dec., ¶17 and Ex. 2,
Ringland Dep, at 112:4-14;
130:2-9.

4 84. Homeland denied Plum's
claim for a defense and relied
on Exclusion (D)(7) even
though they did not know
whether participating in the
Rhino ATV activity was
within Harris's job duties as
DON.
8

9 Huver Dec., ¶17 and Ex. 2,
Ringland Dep, at 101:12 -
102:8; 184:25 - 185:7; 186:8-
10 12.

11 85. Homeland denied Plum's
claim for a defense without
ever asking Plum whether
participating in the Rhino
ATV activity was within
Harris's job duties as DON.
14

15 Huver Dec., ¶17 and Ex. 2,
Ringland Dep, at 101:12 -
16 102:8; 184:25 - 185:7; 186:8-
12.

17 86. Homeland denied Plum's
claim for a defense, relying
solely on the "Insured v.
Insured" Exclusion (D)(7)
even though they knew they
had not conclusively proven
that Harris was an "Insured."
21

22 Huver Dec., ¶16 and Ex. 1,
Freaner Dep, at 68:25 - 69:25;
23 78:6-15; 80:20 - 81:19; 94:25
- 95:22; 95:23 - 96:5; 96:18 -
97:13; 101:14-25; 103:8-14;
106:10-24; 109:5-10; 116:10-
14; 149:23 - 150:5. Huver
25 Dec., ¶17 and Ex. 2, Ringland
Dep, at 81:5-17; 103:8-23;
104:11-15; 105:21 - 106:4;
112:4-14; 182:7-19.
27

28

84.

85.

86.

- 1 87. Homeland failed to adequately 87.
2 investigate Plum's claim
3 before denying a defense.
4 Huver Dec., ¶16 and Ex. 1,
5 Freaner Dep, at 70:15-20;
6 71:9-25; 72:23 - 73:25; 75:6-
7 24; 75:25 - 77:23. Huver
8 Dec., ¶17 and Ex. 2, Ringland
9 Dep, at 96:1 - 98:9; 130:10 -
10 131:4; 184:25 - 185:7; 186:8-
11 21.
12
13 88. Homeland never contacted 88.
14 anyone at Plum's broker to
15 investigate whether Harris's
16 allegations in her lawsuit that
17 she was outside the course and
18 scope of her job duties were
19 potentially true.
20 Huver Dec., ¶16 and Ex. 1,
21 Freaner Dep, at 70:15-20;
22 71:9-25.
23 89. Homeland never asked Plum 89.
24 whether Harris's allegations
25 that she was outside the course
26 and scope of her job duties
27 were true or not.
28 Huver Dec., ¶16 and Ex. 1,
29 Freaner Dep, at 71:9-25.
30 Huver Dec., ¶17 and Ex. 2,
31 Ringland Dep, at 96:1 - 98:9;
32 102:9-14; 184:25 - 185:7;
33 186:8-12.
34
35 90. Homeland never contacted 90.
36 Harris or her lawyers to
37 investigate whether the
38 complaint's allegations that
39 she was not in the course and
40 scope of her job duties were
41 true or not.
42 Huver Dec., ¶16 and Ex. 1,
43 Freaner Dep, at 75:25 - 77:23.
44 Huver Dec., ¶17 and Ex. 2,
45 Ringland Dep, at 88:24 -
46 89:12; 90:21-25.

- 1 91. No one at Plum ever told
2 Homeland that Harris was
3 acting within the course and
4 scope of her job duties as
5 DON because Homeland never
6 asked that question. 91.

7 Huver Dec., ¶17 and Ex. 2,
8 Ringland Dep, at 102:9-14.

9 92. Homeland ignored Plum's
10 pleas for a defense, rejecting
11 out of hand Plum's CEO's
12 letter pointing to Harris's
13 allegations in her complaint.
14
15 Freaner Dec., ¶15-17. Huver
16 Dec., ¶16 and Ex. 1, Freaner
17 Dep, at 135:3-15; 135:25 -
18 137:14; 139:3 - 140:7.
19
20 93. Homeland rejected Toby
21 Tilford's letter, even though
22 they did not disagree with his
23 position that Harris was not an
24 "Insured." 93.
25
26 Huver Dec., ¶16, and Ex. 1,
27 Freaner Dep, at 135:3-15;
28 135:25 - 137:14; 139:3 -
140:7.
29
30 94. Homeland made the decision
31 to deny Plum's request for a
32 defense just 2 days after
33 Daniele Freaner was assigned
34 as the claims adjuster. 94.
35
36 Freaner Dec., ¶7, 9, 11.
37
38 95. Homeland intentionally
39 asserted the "Owned Auto"
40 Exclusion (B)(9) in answers to
41 interrogatories in this bad faith
42 litigation as support for their
43 decision to deny Plum a
44 defense, even though they
45 knew (B)(9) did not apply. 95.
46
47 Huver Dec., ¶16 and Ex. 1,
48 Freaner Dep, at 55:17 - 56:18;
49 58:24 - 59:12; 91:10 - 92:13;
50 93:17-20; 93:21 - 94:11.

1 Huver Dec., ¶17 and Ex. 2,
 2 Ringland Dep, at 145:13-19;
 3 147:9-19; 152:2-5. Huver
 4 Dec., ¶23 and Ex. 14, expert
 5 Reilly report, pg. 204, ¶40.

6 96. Homeland recklessly
 7 disregarded the allegations in
 8 Harris's lawsuit and
 9 unilaterally decided the
 10 disputed issue of Harris's
 11 "course and scope" so they
 12 could deny Plum's claim.

13 Huver Dec., ¶93 and Ex. 1,
 14 Freaner Dep, at 115:8-14;
 15 113:4-14.

16 97. Homeland was consistently
 17 and erroneously focused only
 18 on the fact that Harris was an
 19 "employee" when she was
 20 injured, even though they
 21 knew the correct standard
 22 required Harris to be an
 23 "Insured" in order for
 24 Exclusion (D)(7) to apply.

25 Huver Dec., ¶16 and Ex. 1,
 26 Freaner Dep, at 94:25 - 95:22;
 27 113:15 - 114:7; 123:6-19;
 28 124:9-20; 126:2-9. Huver
 1 Huver
 2 Dec., ¶17 and Ex. 2, Ringland
 3 Dep, at 130:10 - 131:4; 139:6 -
 4 140:4; 186:8-24. Huver Dec.,
 5 ¶23 and Ex. 14, expert Reilly
 6 report, pgs. 202-203, ¶25-33.

7 98. Homeland knew someone
 8 could be an "Employee" and
 9 not be an "Insured" but
 10 persisted in asserting that
 11 Exclusion (D)(7) precluded
 12 coverage simply because
 13 Harris was an "Employee."

14 Huver Dec., ¶16 and Ex. 1,
 15 Freaner Dep, at 113:15 -
 16 114:7. Huver Dec., ¶17 and
 17 Ex. 2, Ringland Dep, at 03:8-
 18 23; 104:11-15; 105:21 - 106:4.
 19 Huver Dec., ¶23 and Ex. 14,
 20 expert Reilly report, pgs. 202-
 21 202, ¶25-33.

22 96.

23 97.

24 98.

- 1 99. Homeland recklessly and
2 intentionally insisted that once
3 Harris was an “Employee,” she
4 was also an “Insured,” even
though they knew these
defined terms had different
meanings.

5 Huver Dec., ¶16 and Ex. 1,
6 Freaner Dep, at 95:23 - 96:5;
116:10-14; 149:23 - 150:5;
113:15 - 114:7. Huver Dec.,
7 ¶17 and Ex. 2, Ringland Dep,
8 at 94:5-18; 103:8-23; 105:21 -
106:4; 130:2-9; 180:5-11.
Huver Dec., ¶23 and Ex. 14,
9 expert Reilly report, pgs. 202-
10 203, ¶25-32.

11 100. Although Homeland claimed
12 Harris’s civil lawsuit’s
13 allegations were “groundless,
14 false or fraudulent,” they knew
they were still obligated to
defend Plum but intentionally
refused to do so.

15 Defs’ Ex. 1, Section (I)(F), pg.
16 44. Huver Dec., ¶16 and Ex.
17 1, Freaner Dep, at 115:24 -
116:9. Huver Dec., ¶17 and
18 Ex. 2, Ringland Dep, at 153:25
- 154:22. Huver Dec., ¶23 and
19 Ex. 14, expert Reilly report,
pgs. 202-203, ¶25-31.

20 101. Homeland consciously and
21 intentionally rejected any
22 notion of defending Plum
23 under a reservation of rights,
even though they knew if any
doubt regarding coverage
existed, doing so was the best
way to protect their insured.

24 Huver Dec., ¶16 and Ex. 1,
25 Freaner Dep, at 156:5-19.
Huver Dec., ¶17 and Ex. 2,
26 Ringland Dep, at 37:22 - 39:2;
42:18 - 43:17; 44:13-17.
Huver Dec., ¶23 and Ex. 14,
27 expert Reilly report, pg. 204,
28 ¶38.

1 102. Homeland has persisted in
2 refusing to indemnify Plum
3 for the Harris settlement, even
4 though Homeland agrees the
5 issue of whether Harris was in
6 the course and scope of her job
7 duties has never been
8 conclusively established.
9

10 Huver Dec., ¶16 and Ex. 1,
11 Freaner Dep, at 63:20 - 64:16;
12 68:25 - 69:25; 80:20 - 81:19;
13 85:4-9; 96:18 - 97:13; 101:14-
14 25; 103:8-14; 106:10-24;
15 109:5-10; 127:7 - 128:2;
16 150:17-19. Huver Dec., ¶17
17 and Ex. 2, Ringland Dep,
18 81:5-17; 106:12 - 107:9; 109:7
19 - 110:1; 130:2-9; 182:7-19.
20 Huver Dec., ¶15 and Ex. 13.
21

22 103. Homeland has persisted in its
23 bad faith refusal to indemnify
24 Plum by raising 2 new
25 exclusions 2 years after
26 denying Plum's claim - (D)(2)
27 and (D)(5) - even though they
28 know these exclusions do not
 apply.

1 Huver Dec., ¶16 and Ex. 1,
2 Freaner Dep, at 137:15 -
3 138:11. Huver Dec., ¶17 and
4 Ex. 2, Ringland Dep, at 178:4-
5 24. Defs' Ex. 5, pgs. 147-151.
6 Docket Nos. 10, 32. Huver
7 Dec., ¶8, 10, 21.
8

9 104. Homeland's claims adjuster
10 Freaner and claims manager
11 Ringland insist if they had the
12 opportunity to adjust Plum's
13 claim again, they would treat
14 Plum the exact same way and
15 not change one thing they did.
16

17 Huver Dec., ¶16 and Ex. 1,
18 Freaner Dep, at 122:11-21.
19 Huver Dec., ¶17 and Ex. 2,
20 Ringland Dep, at 176:5 -
21 177:4.
22

102.

103.

104.

1 105. Homeland's conduct in
2 denying Plum's claim for a
3 defense was unreasonable, was
4 in total disregard of Plum's
5 interests, put Homeland's
6 interests ahead of Plum's, and
7 demonstrated a lack of proper
8 training and/or supervision.

9
10 Huver Dec., ¶23 and Ex. 14,
11 report of expert David Reilly,
12 ¶25-48.
13

14 106. Plum paid an annual premium
15 of \$3,125,000 for The Policy.

16 Defendants' Ex. 1, pg. 12.

17 107. Plum owes a 40% contingency
18 attorney fee on any recovery in
19 this case as a result of
20 Homeland's refusal to defend
21 and indemnify them.

22 Huver Dec., ¶22 and Ex. 12.

23 108. Plum is entitled to interest on
24 the \$825,000 settlement and
25 the \$112,500 in attorneys' fees
26 and costs incurred to defend
27 and settle the Harris lawsuit,
28 totaling at least \$92,968.75 as
 of this date.

105.

106.

107.

108.

20 Respectfully submitted,

21 THE HUVER LAW FIRM
22 and
23 HARRIS I. STEINBERG, ESQ.

24 DATED: April 10, 2017

25 By: /s/ Richard Huver
26 RICHARD HUVER
27 Attorneys for Plaintiffs